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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JEFFREY G., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

JEFFREY G.,

Defendant and Appellant.

D070696

(Super. Ct. No. J237823)

APPEAL from a judgment of the Superior Court of San Diego County, Robert J. Trentacosta, Judge. Affirmed.

Alex Kreit, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland, Scott C. Taylor and Britton B. Lacy, Deputy Attorneys General, for Plaintiff and Respondent.

Following an adjudication hearing, the juvenile court made true findings on a petition filed under Welfare and Institutions Code section 602. The court found that Jeffrey G. (the Minor) unlawfully resisted arrest (Pen. Code, § 148, subd. (a)(1)) and unlawfully disturbed a public school (Ed. Code, § 32210). The Minor was placed on probation.

The Minor appeals contending first there was insufficient evidence to support the true finding on the Education Code violation. His second argument is that the police officer did not have probable cause to arrest the Minor for such violation and therefore he could not have resisted arrest. Following our review of the record, we are satisfied there is substantial evidence to support the true finding that the Minor unlawfully disturbed a public school. We also are satisfied the police officer had probable cause to arrest the Minor and thus his actions in resisting arrest constitute a violation of Penal Code section 148. We will affirm the juvenile court's true finding and disposition.

STATEMENT OF FACTS

The facts of the events in this case are not seriously disputed, save for a discrepancy between two witnesses as to one fact. We have reviewed the record and conclude the summary of the operative facts contained in the respondent's brief accurately summarizes the facts in the light most favorable to the trial court's decision. We will include that summary here.

Cynthia Larkin was a vice-principal at Clairemont High School, where the Minor was a student. The school had a policy that students could not walk around with their skateboards or ride their skateboards on the campus. The Minor violated that rule earlier

in the school year, and Ms. Larkin had personally spoken to him more than once about his skateboarding on campus. On December 19, 2014, Ms. Larkin learned that the Minor had his skateboard on campus, so she called the Minor's teacher and had someone confiscate the skateboard and bring it to her. The Minor came to her office very upset and said, "I want my fucking skateboard back." While he had been very friendly and amicable to Ms. Larkin in the past, he was belligerent and loud that day in her office. She tried to calm him down and informed him he would get his skateboard back after school, but reminded him of the rules. The Minor would not calm down, so she called the school police officer, Jesus Montana, for backup and assistance.

Officer Montana had been the campus police officer for almost seven years and he had almost two decades of experience as a sworn officer. Officer Montana noted that although Ms. Larkin was usually a very calm person, she nearly shouted for his assistance over the two-way radio and requested his immediate presence. Officer Montana heard loud yelling in the background when Ms. Larkin called him.

Officer Montana arrived within minutes. He could hear yelling from the outside of the main building, and when he entered the administrative office, he saw the Minor yelling and tried to calm him down. The Minor kept cursing and being belligerent. Rather than calming down, he seemed to get more aggravated. Officer Montana had the Minor enter Ms. Larkin's office and sit down. Officer Montana asked what was going on and the Minor started yelling again, stating that Ms. Larkin stole his skateboard and he wanted it back. The Minor continued to shout, so Officer Montana informed him that if he did not stop, he could be arrested for disrupting a school setting. The Minor

responded with profanity. He was extremely upset and irrational. Officer Montana observed that the Minor was not calming down, but getting more and more agitated. The Minor stood up to leave, but Officer Montana ordered him to sit back down and reminded him that if he continued yelling he would be arrested.

After the Minor sat back down and Officer Montana explained that he would not be getting his skateboard back due to the school rules violation, the Minor tightly grabbed the arms of the chair he was sitting in and pushed himself out of the chair right towards Officer Montana. The two were standing face-to-face inches apart, so Officer Montana pushed the Minor back to create some space. The Minor said either "Don't fucking touch me" or "You can't fucking touch me," and took a step towards Officer Montana while raising his arms. After the Minor made an aggressive move towards Officer Montana, Officer Montana grabbed him to restrain him and pushed him against the wall. Seeing that the Minor's behavior was escalating, Officer Montana decided he needed to take control of the Minor and place him under arrest. Officer Montana was able to handcuff the Minor's left arm, but the Minor continued to resist and attempted to hit Officer Montana. After Officer Montana warned the Minor that he would use his taser if the Minor did not stop resisting, the Minor calmed down and complied. During the struggle, the school's other vice-principal attempted to enter, banged on the door, and asked if help was needed. After Officer Montana handcuffed the Minor, he would not stop yelling. Officer Montana escorted the Minor to his office at the back of the campus and the Minor continued to yell as they walked past six different classrooms.

The incident occurred right after lunch, which is a particularly busy time of day when a lot of students and staff are in and around the administrative office. Officer Montana opined that the Minor's behavior prevented the office staff at the school from being able to concentrate on their work and did not allow the office to operate as it normally would.

Defense Evidence

The defense called a former police chief to testify that Officer Montana used excessive force in making the arrest of the Minor. The witness's opinion was "the use of the Taser in this case was an improper tactic and excessive force."

DISCUSSION

A. The Evidence Was Sufficient to Support the True Finding

The Minor contends there was insufficient evidence to establish a willful disruption of a public school under Education Code section 32210,¹ which makes it unlawful to willfully disturb any public school or any school meeting. The Minor acknowledges his conduct was loud, demanding, profane, and persistent. He argues that is not enough to constitute a prohibited disturbance. We find the record clearly shows the Minor's conduct constituted willful disturbance within the meaning of the code section.

¹ Education Code section 32210 provides: "Any person who willfully disturbs any public school or any public school meeting is guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars (\$500)."

1. Standard of Review

When we review a challenge to the sufficiency of the evidence to support a conviction, or true finding of the commission of a crime we apply the familiar substantial evidence standard. Under that standard we review the entire record to determine whether there is sufficient substantial evidence from which a reasonable fact finder could conclude, beyond a reasonable doubt, that the elements of the offense have been proved. In making such analysis we review the evidence in the most favorable light to the trial court's decision and draw all reasonable inferences in support of that decision. We do not make credibility determinations nor do we weigh the evidence. We simply decide whether a reasonable fact finder could have reached such conclusion. (*People v. Johnson* (1980) 26 Cal.3d 557, 577-578; *People v. Valdez* (2004) 32 Cal.4th 73, 104.)

The Minor relies heavily on *In re J.C.* (2014) 228 Cal.App.4th 1394 (*J.C.*). We do not believe *J.C.* aids the Minor. Indeed, the facts are strikingly similar to those in the present case. The court in *J.C.* found the evidence sufficient to support the juvenile court's true finding on a violation of Education Code section 32210.

In *J.C.*, *supra*, 228 Cal.App.4th 1394, a school police officer was called to a disturbance in the administration building of a high school. The student involved was loud, profane, and irate. The student made threats toward another student (who was not present). The student continued with loud, profane and threatening comments. He would not calm down and persisted in his behavior, notwithstanding efforts of the school vice-principal and campus police officer. (*Id.* at pp. 1397-1399.)

The Third District Court of Appeal upheld the true finding. The court found such behavior disrupted the school's operations, was willfully done and constituted a violation of the Education Code. (*Id.* at pp. 1403, 1405.)

The Minor argues the student's behavior in *J.C.*, *supra*, 228 Cal.App.4th 1394 was more aggravated and that his conduct "pales" in comparison. Again, we disagree.

The Minor, who violated the school's policy regarding skateboards, became almost irrational when his skateboard was confiscated. He stormed into the administrative office and angrily demanded his property back. He was loud, profane and could not be calmed down. The vice-principal became sufficiently concerned that she made a radio call to the campus police officer. When the officer arrived, the Minor could be heard yelling and cursing even outside the administration building. The conduct took place after lunch during a busy time in the administrative office when students and staff were present.

The Minor's behavior continued into the vice-principal's office, where he ultimately was aggressive with the officer and was placed under arrest. This led to a fight with the officer in which he drew the attention of the school's other vice-principal who arrived to help deal with the situation. The Minor's loud, profane yelling continued even as he was taken into custody and moved by six different classrooms.

The only difference between this case and the facts of *J.C.*, *supra*, 228 Cal.App.4th 1394 is that *J.C.*'s behavior included threats to harm another student. We believe that to be a distinction without a difference. Here it is plain that the Minor was actively disrupting school activities by his conduct. While he did not threaten a specific person, his conduct was sufficiently threatening to cause the vice-principal to call for

police assistance. Even the presence of a uniformed officer did not deter the Minor from continuing his loud, disruptive behavior. We believe the juvenile court could easily find the Minor's conduct violated the statute, beyond a reasonable doubt.

2. Resisting Arrest

The juvenile court also made a true finding that the minor violated Penal Code section 148, subdivision (a)(1),² when he physically resisted Officer Montana's efforts to place him under arrest. In the juvenile court the Minor contended the arrest was illegal because the officer displayed, but did not activate a Taser to stop the Minor's physical resistance. The juvenile court rejected that contention. The Minor has apparently abandoned the excessive force theory on appeal. He now contends the officer did not have probable cause to believe the Minor had violated the Education Code. We are not persuaded.

Probable cause is established when a reasonable person would suspect that a crime has been committed by the accused. Probable cause is not a precise term and does not rise to the level of proof beyond a reasonable doubt or even preponderance of the evidence. (*People v. Hurtado* (2002) 28 Cal.4th 1179, 1188-1189; *People v. Celis* (2004) 33 Cal.4th 667, 673; *Maryland v. Pringle* (2003) 540 U.S. 366, 371.)

² Penal Code section 148, subdivision (a)(1) provides: "(a)(1) Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment."

The Minor's principal argument against the existence of probable cause is based on his sufficiency of the evidence argument regarding proof of the Education Code violation, which we have rejected. Clearly, the officer here could reasonably believe there had been a willful disturbance of a public school. The officer was a percipient witness to the Minor's loud, aggressive and profane outbursts. The events took place in a busy part of the school's administrative office, where students and staff were present. The Minor would not stop his behavior, which seemed to get worse as school officials tried to calm him down. We are satisfied that any experienced school police officer could reasonably believe that an illegal disturbance of the school was taking place. There was probable cause for the Minor's arrest.

DISPOSITION

The juvenile court's true findings on Education Code section 32210 and Penal Code section 148, subdivision (a)(1) are affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

NARES, J.

HALLER, J.